



## SHAND MORAHAN & COMPANY, INC.

Shand Morahan Plaza, Evanston, Illinois 60201  
(847) 866-2800 Fax (847) 866-0880

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12.11.8

May 27, 1998

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**

Michael David Lichtenstein, Esq.  
Lowenstein, Sandler, Kohl, Fisher & Boylan  
65 Livingston Avenue  
Roseland, New Jersey 07068-1791

**RE:** Potential Claim for Environmental Damage in the Coeur  
d'Alene Basin, Northern Idaho  
**Insured:** Marmon Holdings, Inc., et al.  
**Policy Nos:** LE 10321 (02/1/82 - 10/1/82)  
LE 10343 (10/1/82 - 10/1/83)  
**Issuing Co.:** Evanston Insurance Company  
**SM File #:** RD 102885

Dear Mr. Lichtenstein:

We acknowledge receipt of information forwarded to us concerning the above-captioned matter. We understand that on or about August 29, 1997, the United States Department of Justice and the Coeur d'Alene Tribe filed motions in the United States District Court for the District of Idaho seeking leave to amend their complaints to add Group R as a defendant and seeking contribution pursuant to CERCLA toward the clean up costs of the Coeur d'Alene mining district in Northern Idaho as well as natural resource damages.

As you may know, Policy LE 10321 is an Excess Umbrella occurrence liability policy written by Evanston Insurance Company for New Tu Company, et al. This policy has effective dates of February 1, 1982 to October 1, 1982. The limits of liability of the Excess Umbrella Liability policy are \$10,000,000 p/o \$100,000,000 each occurrence and in the aggregate, where applicable, in excess of \$200,000,000 each occurrence and in the aggregate, where applicable. The controlling underlying policy is written by International Insurance Company under Policy No. 523-1267127.

Policy LE 10343 is also an Excess Umbrella occurrence liability policy written by Evanston Insurance Company for Marmon Holdings, Inc., et al. This policy has effective dates of October 1, 1982 to October 1, 1983. The limits of liability of the Excess Umbrella Liability policy are \$10,000,000 p/o \$80,000,000 each occurrence and in the aggregate, where applicable, in excess of \$220,000,000 each occurrence

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Michael David Lichtenstein, Esq.  
SM File No.: RD 192885  
May 27, 1998  
Page 2

and in the aggregate, where applicable. The controlling underlying policy is written by Granite State under Policy No. 6682-3774.

Evanston Insurance Company reserves its rights to deny coverage with respect to this matter. Specifically, the Company has no liability for any bodily injury and/or property damage occurring outside of its policy terms of February 1, 1982 to October 1, 1982 and October 1, 1982 to October 1, 1983.

Evanston Insurance Company is also reserving its rights to deny coverage on the ground that any bodily injury and/or property damage resulting from the Insured's dumping activity was "neither expected nor intended" from the Insured's standpoint, there would be no occurrence as defined in the underlying International Insurance Company Policy No. 523-1267127:

Occurrence means:

an accident or a happening or event, or continuous or repeated exposure to conditions, which results during the policy period, in personal injury, property damage, advertising liability, or professional liability neither expected nor intended from the standpoint of the Insured against whom any resulting claim may be presented. All such exposures to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence.

Evanston Insurance Company is reserving its rights to deny coverage on the ground that response costs are not "property damage" as defined in the controlling underlying International Insurance Company Policy as follows:

Property damage means:

Loss of and or loss of use of, direct damage to, destruction of, disparagement of tangible or intangible property (including consequential loss), other than property owned by the named insured.

The Evanston Insurance Company is reserving its rights to deny coverage on the ground that response costs are not "sums paid as damages in settlement of a claim or in satisfaction of a judgment" and thus not part of the "ultimate net loss" definition of the underlying International Company policy; claims for response costs are essentially claims for restitution or equitable relief.



Michael David Lichtenstein, Esq.  
SM File No.: RD 192885  
May 27, 1998  
Page 3

Ultimate Net Loss means:

The total sum which the Insured, or any company as his insurer or both, become obligated to pay by reason of a claim or claims either through adjudication or compromise, and shall also include allocated expense.

Evanston Insurance Company is also reserving its rights to deny coverage with respect to the underlying International Insurance Company policy under the Seepage, Pollution or Contamination Exclusion, which reads as follows:

This policy does not cover any liability for:

1. Personal injury or loss of, damage to, or loss of use of property, directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph (1)

Shall not apply to liability for personal injury, or loss of or physical damage to or destruction of tangible property or loss of use of such property damaged or destroyed where such seepage, pollution or contamination is caused by sudden, unintended and unexpected happening from the viewpoint of the Insured during the period of this insurance.

2. The cost of removing, nullifying or cleaning up seepage, pollution or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening from the viewpoint of the Insured during the period of this insurance. However, no coverage shall apply for property damage to property owned by any named insured.

Similarly, the Granite State policy underlying the Evanston Insurance Company Policy LE 10343 also contains the same policy wordings as the International Insurance Company policy with respect to the Contamination Exclusion. Evanston Insurance Company reserves its rights to deny coverage in this regard.

Finally, Evanston Insurance Company wishes to call your attention to the "Other Insurance" Section of the Granite Insurance Company which states in pertinent part as follows:



Michael David Lichtenstein, Esq.  
SM File No.: RD 192885  
May 27, 1998  
Page 4

#### Other Insurance

If other available and collectible insurance whether scheduled or unscheduled hereunder with other insurers is available to the insured covering a loss also covered by this policy, other than insurance that is in excess of this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance.

Evanston Insurance Company is advising the Insured that it may seek the application of any other insurance applicable to this claim which is not specifically in excess of the Company's policies.

Please provide us with any and all information you may have concerning coverage positions taken by the underlying carriers and the extent of any impairment of the underlying aggregate.

Evanston Insurance Company reserves and preserves all of its rights to deny coverage and assert any additional policy defenses it may have applicable to this case. Any steps that have or shall be taken on behalf of the Company during its investigation of this matter are without prejudice to its rights under the terms and conditions of the referenced policies. No act of any agent or employee of the Company shall be deemed to operate as a waiver with respect to Evanston Insurance Company's rights under these policies. Nothing contained within this letter shall be deemed an admission that any coverage exists for this matter.

We trust you understand Evanston Insurance Company's coverage position as well as the necessity for all parties to these insurance contracts to preserve and reserve all of their rights. In the event you have any questions concerning this letter, do not hesitate to contact the undersigned at (847 866-0104. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joan V. Schiffers".

Joan V. Schiffers  
Claim Analyst III

JVS/lmm